Red Coats, Inc. *and* Local 82, Service Employees International Union, AFL–CIO, CLC. Cases 5–CA–25110 and 5–CA–25639

April 30, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND LIEBMAN

On June 4, 1997, Administrative Law Judge Irwin H. Socoloff issued the attached decision. The Respondent filed exceptions and a brief in support, and the General Counsel and the Charging Party filed answering briefs. The Respondent filed a brief in response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions, and to adopt the recommended Order as modified.[1]

A. Background

The Respondent provides janitorial services for firms and institutions located throughout the Washington, D.C. metropolitan area, and has cleaning contracts covering approximately 175 buildings. Between March and June 1994, the Respondent was awarded contracts to perform cleaning services at three commercial office buildings located at 1255 23d Street, NW, 2550 M Street, NW, and 555 4th Street, NW, Washington, D.C. Prior to that time, the janitorial services at these three locations were provided by three different firms, and the employees at each site had been represented by the Union as part of three larger, employerwide units.

In June 1994, the Respondent extended voluntary recognition to the Union as the collective-bargaining representative of the cleaning employees working in the three buildings at issue, but granted that recognition in three separate, single-location units. Thereafter, the Respondent and the Union engaged in collective-bargaining negotiations for approximately 5 months.

In the course of negotiations, the Respondent stressed the necessity of bargaining strictly on an individual building-by-building basis. It also repeatedly informed the Union that it was unwilling to pay the wage rates and benefits that were set forth in the areawide collective-bargaining agreement (the master agreement) between the Union and several large contractors in the area. The Respondent repeatedly sought, and received, assurances from the Union that the Union could negotiate on a single-building basis unfettered by the master agreement.

During the course of negotiations, it became apparent that a gulf existed between the Respondent's desired wage rates, which were far below those in the master agreement, and the wage rates insisted upon by the Union, which far exceeded those in the master agreement. In light of the lack of progress on this issue, the Respondent declared an impasse at the December 14, 1994 negotiating session, and refused to engage in further negotiations.[2] On September 6, 1995,[3] the Respondent withdrew its recognition of the Union as the collective-bargaining representative in the three units, claiming that the single-location bargaining units were inappropriate for bargaining.

B. The Judge's Decision

The judge found that the Respondent was not privileged to withdraw recognition from the Union on the basis that the single-location units were inappropriate, and violated Section 8(a)(5) and (1) by doing so. In so finding, the judge relied on the Board's decision in *Morse Shoe I*.[4] In *Morse Shoe I*, the respondent argued that it was privileged to withdraw recognition from the union since the union had not established majority status at the time of the initial recognition and that the contractual unit was inappropriate. The Board rejected this argument, applying the principles set forth in *North Bros. Ford, Inc.*,[5] and the Supreme Court's decision in *Bryan Mfg. Co.*,[6] that an employer may not defend against a refusal-to-bargain allegation on the basis that the original recognition of the union was unlawful, where that recognition occurred more than 6 months before the charges raising the issue had been filed.

Applying this principle, the judge noted that, here, the Respondent's original recognition of the Union occurred 15 months prior to the withdrawal of recognition. He further noted that the Respondent did not show that the units had become inappropriate due to a change in circumstances within the 6-month period preceding the charge being filed. The judge therefore concluded that the Respondent's defense to the withdrawal of recogni-

[1] We will modify the judge's recommended Order in accordance with our recent decision in *Indian Hills Care Center,* 321 NLRB 144 (1996).

[2] The Union filed an unfair labor practice charge alleging that the Respondent engaged in an unlawful refusal to bargain. This charge was dismissed by the Regional Director on July 19, 1995.

[3] We correct the judge's inadvertent error in referring to this date as September 6, 1996.

[4] 227 NLRB 391 (1976), sup. dec. 231 NLRB 13 (1977) (*Morse Shoe II*), enfd. 591 F.2d 542 (9th Cir. 1979). In *Morse Shoe II*, the Board sua sponte reconsidered its decision in *Morse Shoe I*, affirming its holding that the respondent's defense to the withdrawal of recognition charges was time-barred by Sec. 10(b), and also finding that, "without regard to the applicability of Section 10(b)," the record evidence supported a finding that the unit at issue was an appropriate one. 231 NLRB at 13.

[5] 220 NLRB 1021 (1975).

[6] *Machinist Local Lodge 1424 (Bryan Mfg. Co.) v. NLRB,* 362 U.S. 411 (1960) (complaints against a union and an employer time-barred by Sec. 10(b) where, although the union lacked majority support when voluntarily recognized by the employer, the collective-bargaining agreements at issue were entered into 10 and 12 months before charges were filed).

tion allegations was time barred by Section 10(b), and that the Respondent violated Section 8(a)(5).

C. The Parties' Positions

The Respondent maintains that the judge's reliance on *Morse Shoe I* is misplaced, and that it is not time barred by Section 10(b) from asserting that the units are inappropriate. The Respondent contends that in *Morse Shoe II*[7] the Board retreated from its position in *Morse Shoe I*, and established that Section 10(b) does not preclude an employer from withdrawing recognition on the grounds that the individual bargaining units were inappropriate at the time recognition was withdrawn. The Respondent further argues that the focus of the Board's inquiry should be whether the unit was appropriate at the time that recognition was *withdrawn*, and not, as in *Morse Shoe I*, whether the unit was appropriate at the time recognition was *granted*.

In addition, the Respondent maintains that the Board has a nondelegable duty to make a unit determination in every case,[8] and that the Board, by making a unit determination in *Morse Shoe II*, recognized that the Act expressly requires the Board to determine whether the challenged bargaining units were appropriate at the time that recognition was withdrawn. The three single-location units here are not appropriate, the Respondent asserts, because the employees at these three locations do not enjoy any separate community of interest which would distinguish them from a larger unit of the Respondent's cleaning employees at all the buildings cleaned by the Respondent. Accordingly, the Respondent argues that because the units were not appropriate at the time that recognition was withdrawn, a date within the 10(b) period, its withdrawal of recognition was lawful.

The General Counsel and the Charging Party assert that the principles of *Morse Shoe I* are applicable here and that the judge's finding that the Respondent was precluded by 10(b) from challenging the appropriateness of the unit should be affirmed. They maintain that no determination as to the appropriate unit is required, because a defense on this ground is time-barred. In addition, the Charging Party argues, and the General Counsel concurs, that the principles of equitable estoppel preclude the Respondent from defending its refusal to bargain on the grounds that the recognized units are inappropriate.

Findings and Conclusions

We adopt the judge's finding that the Respondent violated Section 8(a)(5) of the Act by withdrawing recognition from the Union. We find it unnecessary to pass on the judge's reliance on Section 10(b), however, because we find that the Respondent is equitably estopped from challenging the appropriateness of the units it agreed to when it extended voluntary recognition.[9]

In *Principles of Equity*, McClintock states at 80 (2d ed. 1948):

> The gist of equitable estoppel is that a party who has by his statements or conduct, asserted a claim based on the assumption of the truth of certain facts, whereby he has obtained a benefit from another party, cannot later assert that those facts are not true if thereby the other party will be prejudiced.

The Board has long identified the essential elements of equitable estoppel as knowledge, intent, mistaken belief, and detrimental reliance.[10] We find that each of these elements is present here.

There is no dispute that the Respondent knew from the outset that there was an issue as to whether the single-location units it requested during negotiations were appropriate. The Respondent's attorney testified at the hearing that he harbored some doubt at the time that recognition was granted regarding the appropriateness of the units, but that the Respondent decided to proceed with bargaining with the intent to negotiate individual contracts at the three locations. This testimony establishes that the Respondent had the knowledge and intent required under an equitable estoppel analysis.

In addition, the facts establish that the Union mistakenly believed that the Respondent would continue to recognize the Union as the collective-bargaining representative in the bargaining units it had requested in negotiations. By voluntarily recognizing the Union, and then insisting in negotiations that the parties bargain on a single-location basis, the Respondent induced the Union to believe that the Respondent would forgo any challenge to the Union's status based on a unit appropriateness argument. The Union, acting on its belief regarding the Respondent's intentions, relied to its detriment on the Respondent's actions. Had the unit appropriateness been promptly challenged, the Union would have been in a stronger position at that time either to commence a companywide organizing campaign or to seek the Board's processes to establish itself as the representative of the employees.[11] Thus, the elements of equitable estoppel are met here, and the Respondent may not now challenge

[7] 231 NLRB 13.

[8] *NLRB v. Indianapolis Mack Sales & Service, Inc.*, 802 F.2d 280, 283 (7th Cir. 1986); *NLRB v. Chemetron Corp.*, 699 F.2d 148, 153 (3d Cir. 1983).

[9] The Respondent argues that the Charging Party's equitable estoppel argument is untimely as well as without merit. However, the Board is not precluded from addressing such issues sua sponte. *Lehigh Lumber Co.*, 238 NLRB 675, 680 fn. 12 (1978).

[10] *R.P.C. Inc.*, 311 NLRB 232, 233 (1993); *Lehigh Portland Cement Co.*, 286 NLRB 1366, 1383 (1987).

[11] The Union's position would have been stronger at that time because it could have begun organizing the employees prior to the 5 months of futile bargaining with the Respondent. The Union's inability to reach an agreement with the Respondent during that time would most likely have a negative impact on the employees' impression of the Union's effectiveness, and would have drained the Union's resources as well.

the appropriateness of the units, to the Union's detriment, when the unit descriptions were something upon which the Respondent insisted in order to gain a benefit from the Union.

The principle of equitable estoppel has been previously applied by the Board in cases involving union mergers in which the employer belatedly withdrew recognition from a union based on the assertion that union merger was invalid.[12] In those cases, as here, "the key is that the estopped party, by its actions, has obtained a benefit."[13] The benefit received here by the Respondent was the avoidance of a companywide union organizing campaign and the stabilization of labor relations. The policies of the Act are not served by allowing the Respondent to use the process of voluntary recognition to gain this benefit, only to cast off this process when it does not achieve what it desires in negotiations. Accordingly, we agree with the judge that the Respondent violated Section 8(a)(5) and (1) by withdrawing recognition from the Union.

In addition, assuming arguendo that the Board is obligated to make a unit determination in each case, as argued by the Respondent, we find that, in the circumstances here, the challenged units are appropriate for bargaining. In *NLRB v. Chemetron Corp.*,[14] the Third Circuit found that Section 9(b) of the Act expressly requires the Board to make a determination as to unit appropriateness "in each case." The court found that the "legislative command is mandatory and constitutes a nondelegable duty imposed on the Board by Congress."[15] The court further explained, however, that "in a voluntary recognition case, section 9(b) requires only that the Board make a determination that the unit agreed upon by the parties is not inconsistent with the National Labor Relations Act and past Board policy."[16]

This conclusion is supported by the Board's decision in *Central Washington Hospital*.[17] There, the Board adopted the judge's decision which found that several voluntarily recognized units limited to licensed practical nurse (LPN) employees were appropriate for purposes of collective bargaining, even though the Board's policy in cases of initial organization was to group LPNs together with other hospital technical employees in a single unit. The judge noted that "[u]nit appropriateness is not an absolute concept; it depends in part upon the context in which the unit issue arises."[18] The judge further relied on the Board's decision in *Otis Hospital*,[19] where it held that it would give effect to all stipulations designating unit compositions that do not contravene the provisions or purposes of the Act or well-settled Board policies. In so holding, the Board emphasized that it was consonant with the design of the Act to give the parties the broadest permissible latitude to mutually define the context in which collective bargaining should take place. The judge in *Central Washington Hospital* determined that the same policies and objectives applied by the Board in *Otis Hospital* are applicable to bargaining relationships based on voluntary recognition.

The judge further found that this holding was not at variance with *Chemetron,* because all that was required by that case was that the Board make a determination that "the unit agreed upon by the parties is not inconsistent with the National Labor Relations Act and past Board policy." The judge in *Central Washington* made a specific 9(b) finding that the LPN units were appropriate on the basis of *Otis Hospital*, noting that the *Chemetron* court specifically cited *Otis Hospital* as the type of determination it expects.

In the present case, we find that the units at issue are not prohibited by the statute, and thus are not inconsistent with the Act. Further, we find that the challenged units are not inconsistent with Board policy. Even if these units would not have been units that the Board would have found appropriate if called upon to do so in the first instance, this is not the only consideration to be weighed in a voluntary recognition case. Thus, the voluntary agreement of the parties to bargain in these units must also be given substantial consideration, as well as the long established Board policy of promoting stability in labor relations.[20] To permit the Respondent to change its mind and withdraw recognition because it did not like the way bargaining was proceeding would undermine the Board's commitment to voluntary recognition agreements, and would encourage the parties to manipulate the process to their unfair advantage. Such a result would not effectuate the purposes of the Act and the Board's strong interest in the stabilization of labor relations. Accordingly, we determine that in the present circumstances, where a unit has been agreed to by the parties, and is not prohibited by the statute, such a unit is appropriate under the Act, regardless of whether the Board would have certified such a unit ab initio.

[12] *R.P.C. Inc.,* supra; *Lehigh Portland Cement Co*., supra; *Jolie Belts Co.,* 265 NLRB 1130 (1982); *Knapp-Sherrill Co.,* 263 NLRB 396 (1982).

[13] *Lehigh Portland Cement*, supra, 286 NLRB at 1383.

[14] 699 F.2d 148 (1983).

[15] Id. at 153.

[16] Id. at 156.

[17] 303 NLRB 404 (1991).

[18] Id. at 411.

[19] 219 NLRB 164, 165 (1975).

[20] As noted above, the Board gives effect to unit stipulations, even when those units may not be units that the Board itself would have found appropriate if presented with the issue ab initio, so long as those units are not prohibited by the statute. This policy encourages the parties to work together to reach agreement on unit issues, to mutually define the context in which collective bargaining will take place, and promotes harmony and stability of labor relations. Preventing an employer from an untimely challenge to unit appropriateness in a case involving voluntary recognition promotes these same policies of the Act.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Red Coats, Inc., Bethesda, Maryland, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Substitute the following for paragraphs 2(b) and (c):

"(b) Within 14 days after service by the Region, post at the buildings located at 1255 23d Street NW; 2550 M Street, NW; and 555 4th Street, NW, in Washington D.C., copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 9, 1995.

"(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply."

Eileen Conway, Esq., for the General Counsel.
Fred S. Sommer, Esq., of Rockville, Maryland, for the Respondent.
Eunice H. Washington, Esq., of Washington, D.C., for the Charging Party.

DECISION

STATEMENT OF THE CASE

IRWIN H. SOCOLOFF, Administrative Law Judge. Upon charges filed on February 9 and September 15, 1995, by Local 82, Service Employees International Union, AFL–CIO, CLC (the Union) against Red Coats, Inc. (the Respondent), the General Counsel of the National Labor Relations Board (the Board), by the Regional Director for Region 5, issued a consolidated complaint dated April 22, 1996, alleging violations by Respondent of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act (the Act). Respondent, by its answer, denied the commission of any unfair labor practices.

Pursuant to notice, trial was held before me, in Washington, DC, on February 12, 1997, at which the General Counsel, the Charging Party, and the Respondent were represented by counsel and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Thereafter, the parties filed briefs which have been duly considered.

Upon the entire record in these cases, and from my observations of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation, with an office and facility located in Bethesda, Maryland, is engaged in the business of providing janitorial services for firms and institutions located throughout the Washington, D.C. metropolitan area. During the 12-month period preceding issuance of the complaint, Respondent, in the course and conduct of its business operations, provided such services, valued in excess of $50,000, to entities located in the District of Columbia. I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. Background

During the March to June 1994 period, Respondent was awarded contracts to perform the cleaning services at multitenant commercial office buildings located at 1255 23rd Street, NW, 2550 M Street, NW, and 555 4th Street, NW, Washington, DC. Before that time, janitorial services at those buildings were performed by, respectively, Pritchard Industries, Inc., American Building Maintenance, Inc., and International Service Systems, Inc., and the janitors working at those sites were represented by the Union in separate multibuilding units. In June 1994, Red Coats extended voluntary recognition to the Union as collective-bargaining representative of the cleaning employees working in the three subject buildings, in three distinct units. Thereafter, and for a period of some 5 months, the parties engaged in separate rounds of collective-bargaining negotiations covering each of the single-location units. However, in December, Respondent declared impasse and it refused to engage in further negotiations. On September 6, 1996, Red Coats withdrew its recognition of the Union as representative of its employees in the three units.

In the instant cases, the General Counsel contends that Respondent ceased to recognize the Union's representative status without legal justification and, accordingly, acted in violation of Section 8(a)(5) of the Act. Respondent asserts that it was privileged to withdraw recognition because, in its view, the single location units were not appropriate for bargaining. Also at issue is whether, during the course of negotiations, Respondent violated Section 8(a)(5) of the Act by refusing to furnish to the Union requested information necessary and relevant to the performance of its statutory duties.

B. Facts[1]

After hiring a majority of its predecessors' employees, and extending recognition to Local 82, Respondent, in the course of negotiations, stressed the necessity of bargaining, strictly, on an individual building basis. Further, it informed the Union, repeatedly, that Red Coats was unwilling to pay the wage rates

[1] The fact-findings contained herein are based upon a composite of the documentary and testimonial evidence introduced at trial. The record is generally free of significant testimonial conflict.

and benefits as set forth in the areawide collective-bargaining agreement between the Union and several large contractors (the "Master Agreement"). As that contract contains a recognition provision extending coverage to employees at all buildings cleaned by a signatory employer, and as it also contains a most favored nations clause requiring the Union to grant to signatory employers any more favorable terms agreed to with another employer, Respondent asked for, and received, assurances from the Union that it, the Union, could negotiate on a single building basis, unfettered by the requirements of the Master Agreement. Nonetheless, bargaining failed to bridge the considerable differences between the parties regarding the critical subject of wages. Red Coats proposed, and insisted upon, wage rates below the levels contained in the Master, while the Union demanded rates substantially exceeding those set forth in that agreement. In light of the lack of progress on this issue, Respondent, at negotiating sessions conducted on December 14, 1994, declared impasse, and refused to continue to meet and to bargain. Thereafter, the Union filed unfair labor practice charges with the Board and, by letter dated July 19, 1995, were advised by the Regional Director that he was refusing to issue a complaint in the matter.

On August 1, in an effort to break the impasse, the Union, by letter, modified its wage proposals. However, the new rates it sought were, still, much higher than those contained in the Master. In response, in its letter dated September 6, 1995, Respondent advised the Union that it would no longer recognize it as representative of the Red Coats employees at the three individual buildings because, Respondent stated, the "individual buildings do not constitute appropriate bargaining units." Rather, Red Coats asserted, an appropriate unit must include the employees working at all Washington, DC metropolitan area, buildings, at which Respondent provides cleaning services, some 175 in number. At trial, Respondent's attorney, Dan Palumbo, who represented it at negotiations, testified:

> Red Coats' initial recognition of the Union was based on our desire and willingness to bargain on a building basis. As a result of six months of negotiations, it was evident to me that the Union had no intention of bargaining on a building by building basis. There were doubts that we had about the appropriateness of the unit. We put those aside because we were hoping that the Union would go ahead and negotiate on a building by building basis. However, as I said, after six months, we viewed the experiment as a failure and withdrew recognition, which we viewed as our legal right to do at any time, but we exercised it after the six months of negotiations.

In this connection, Respondent has offered considerable evidence concerning the number and geographic location of the DC area, buildings it services, the similarity of skills, duties, and working conditions of the janitors employed at those buildings, its centralized management and the lack of on-site supervision and the fact of temporary employee interchange, in an effort to show the inappropriateness of individual building bargaining units. However, no evidence was offered to show changed circumstances from the time of recognition in June 1994, until recognition was withdrawn in September 1995.

During the period of negotiations, the Union made numerous information requests for broad categories of data. In response, Red Coats turned over to the Union thousands of pages of documents. At a bargaining session held on September 20, 1994, the Union verbally requested the following information: (1) the square footage at each building; (2) the number of work hours at each building; (3) the square footage assigned to each employee, and (4) the square footage actually cleaned by each employee. The Union sought this information in order to analyze issues such as workload, staffing, and wage proposals. At a November 1, meeting, the Union requested a list of employees who, previously, had requested funeral leave, and the disposition of those requests. The Union wanted this information to assist it in the preparation of a funeral leave proposal.

It is undisputed that, following the funeral leave information request, Red Coats advised the Union that there were not any documents in existence containing the information sought. Likewise, Red Coats does not keep records showing the square footage assigned to each employee and the square footage actually cleaned by each worker. While Respondent did not, directly, provide the Union with information showing the square footage at each building, and the number of work hours at each site, Red Coats did furnish data from which the requested information easily could be ascertained. Thus, by multiplying the production rate (the number of square feet an employee cleans per hour) by the number of employees by the shift hours, data supplied by Red Coats, the Union could, generally, determine the square footage at each building. By multiplying the number of employees by the shift hours, the number of work hours at each building was ascertainable.

C. Conclusions

After hiring a majority of its predecessors' employees at the three subject buildings, and continuing, at those locations, to conduct the same business as the predecessors, Respondent extended recognition to the Union in single-site units. Some 15 months later, after bargaining had not produced agreement, Red Coats withdrew recognition because, it asserted, the single-site units were inappropriate. Since, under established Board law, Respondent, acting when it did, was not privileged to terminate the bargaining relationships on this ground, it thereby violated Section 8(a)(5) of the Act.

In *Morse Shoe, Inc.,*[2] the Board held, in light of the Supreme Court's decision in *Bryan Mfg. Co.,*[3] that an employer may not defend against a refusal-to-bargain allegation on the ground that the original recognition, occurring more than 6 months before charges were filed in the proceeding raising the issue, was unlawful. The Board stated:

> . . . Any such defense is barred by Section 10(b) of the Act, which, as the Court explained in *Bryan*, was specifically intended by Congress to stabilize bargaining relationships.

With regard to the contentions raised in that case, the Board concluded:

> . . . The record herein shows that Respondent signed the assent agreement almost 10 months before it withdrew recognition from the Union and over a year prior to the time the Union filed the instant charge. Hence, it cannot now attack the Union's majority status among its employees or the appropriateness of the unit.

[2] 227 NLRB 391 (1976), sup. dec., 231 NLRB 13 (1977), enfd. 591 F.2d 542 (9th Cir. 1979).

[3] *Machinists Local Lodge 1424 (Bryan Mfg. Co.) v. NLRB,* 362 U.S. 411 (1960).

As the case law interpreting Section 10(b) of the Act thus precludes Respondent from defending against the instant refusal-to-bargain allegation on the ground that the single-site units were inappropriate, and as Respondent has not shown that the units, postrecognition, became inappropriate due to changed circumstances,[4] its withdrawal of recognition of the Union as the exclusive representative of certain of its employees has not been justified, and was unlawful.

With regard to the information requests, it is well settled that an employer has a duty to supply requested information to the statutory representative of its employees if the data sought is relevant and reasonably necessary to the bargaining representative's performance of its duties. Here, the record evidence shows that the Union's information requests were honored, except where the data sought was not in existence, albeit, in one or two instances, the information furnished was in slightly different, but no less useful, form than originally sought. I, thus, conclude that the General Counsel has not shown violations of Section 8(a)(5) of the Act in these regards.

IV. THE EFFECTS OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in Section I, above, have a close, intimate and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practice conduct in violation of Section 8(a)(5) and (1) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

CONCLUSIONS OF LAW

1. Red Coats, Inc. is an employer engaged in commerce, and in operations affecting commerce, within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local 82, Service Employees International Union, AFL–CIO, CLC is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time hourly paid janitorial and maintenance employees, including lead janitors, but excluding clericals, guards, and supervisors as defined in the Act, employed by Respondent at 1255 23d Street, NW, 2550 M Street, NW, and 555 4th Street, NW, Washington, DC, constitute, respectively, single location units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material, the Union has been, and is now, the exclusive representative of all employees in the aforesaid bargaining units for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By its September 6, 1995 withdrawal of recognition of the Union as exclusive collective-bargaining representative of the employees in the appropriate units, Respondent has engaged in unfair labor practice conduct within the meaning of Section 8(a)(5) of the Act.

6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

7. Respondent has not otherwise violated the Act, as alleged in the complaint.

Upon the foregoing findings of fact, and conclusions of law, I issue the following recommended[5]

ORDER

The Respondent, Red Coats, Inc., Bethesda, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from the Union, and refusing to bargain with it in good faith concerning rates of pay, wages, hours, and other terms and conditions of employment, as the exclusive bargaining representative of the employees in the appropriate units.

(b) In any like or related manner, interfering with, restraining or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Upon request, recognize the Union and bargain with it in good faith as the exclusive representative of all employees in the aforesaid appropriate units with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if understandings are reached, embody the understandings in signed agreements.

(b) Post at its Bethesda, Maryland, facility, copies of the attached notice marked "Appendix."[6] Copies of said notice, on forms provided by the Regional Director for Region 5, after being signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced or covered by any other material.

(e) Notify the Regional Director for Region 5, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

[4] See, e.g., *Abbott-Northwestern Hospital*, 274 NLRB 1063 (1985).

[5] In the event no exceptions are filed as provided by Sect. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions and Order, and all objections thereto shall be deemed waived for all purposes.

[6] In the event that the Board's Order is enforced by a Judgment of the United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall be changed to read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT withdraw recognition of Local 82, Service EmployeesInternational Union, AFL–CIO, CLC, or refuse to bargain collectively with it in good faith as the exclusive bargaining representative of our employees, in the following appropriate single location bargaining units:

> All full-time and regular part-time hourly paid janitorial and maintenance employees, including lead janitors, but excluding clericals, guards and supervisors as defined in the Act, employed, respectively, at 1255 23d Street, NW, 2550 M Street, NW and 555 4th Street, NW, Washington, DC.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees in the exercise of their rights under the Act.

WE WILL, upon request, recognize and bargain with the Union as the exclusive representative of all employees in the appropriate units, described above, with respect to rates of pay, wages, hours and other terms and conditions of employment and, if understandings are reached, embody the understandings in signed agreements.

RED COATS, INC.